

AMENDED IN ASSEMBLY JUNE 26, 2013

SENATE BILL

No. 90

Introduced by Committee on Budget and Fiscal Review

January 10, 2013

An act relating to the Budget Act of 2013 to amend Sections 17053.73 and 23626 of the Revenue and Taxation Code, as added by Assembly Bill 93 of the 2013–14 Regular Session, relating to economic development, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

SB 90, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2013. Economic development: taxation: credits.~~

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including hiring credits within the specified economic development areas, and a hiring credit for taxpayers, other than those allowed a credit with respect to operating in the specified economic development areas.

This bill would, under both laws for taxable years beginning on or after January 1, 2014, and before January 1, 2021, revise the definitions of “qualified full-time employee,” “qualified taxpayer,” and “small business” for the credit against those taxes for portions of the wages paid by a taxpayer, engaged in a trade or business within a designated census tract, as defined, or a former enterprise zone, to certain full-time employees who provide services for that taxpayer in connection with that trade or business.

This bill would make the operation of these revisions contingent on the enactment of Assembly Bill 93 of the 2013–14 Regular Session, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2013.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 17053.73 of the Revenue and Taxation*
2 *Code, as added by Section 13 of Assembly Bill 93 of the 2013-14*
3 *Regular Session, is amended to read:*

4 17053.73. (a) (1) For each taxable year beginning on or after
5 January 1, 2014, and before January 1, 2021, there shall be allowed
6 to a qualified taxpayer that hires a qualified full-time employee
7 and pays or incurs qualified wages attributable to work performed
8 by the qualified full-time employee in a designated census tract
9 or former enterprise zone, and that receives a tentative credit
10 reservation for that qualified full-time employee, a credit against
11 the “net tax,” as defined in Section 17039, in an amount calculated
12 under this section.

13 (2) The amount of the credit allowable under this section for a
14 taxable year shall be equal to the product of the tentative credit
15 amount for the taxable year and the applicable percentage for that
16 taxable year.

17 (3) (A) If a qualified taxpayer relocates to a designated census
18 tract or former enterprise zone, the qualified taxpayer shall be
19 allowed a credit with respect to qualified wages for each qualified
20 full-time employee employed within the new location only if the
21 qualified taxpayer provides each employee at the previous location
22 or locations a written offer of employment at the new location in
23 the designated census tract or former enterprise zone with
24 comparable compensation.

25 (B) For purposes of this paragraph, “relocates to a designated
26 census tract or former enterprise zone” means an increase in the
27 number of qualified full-time employees, employed by a qualified
28 taxpayer, within a designated census tract or tracts or former
29 enterprise zones within a 12-month period in which there is a
30 decrease in the number of full-time employees, employed by the

1 qualified taxpayer in this state, but outside of designated census
2 tracts or former enterprise zone.

3 (C) This paragraph shall not apply to a small business.

4 (4) The credit allowed by this section may be claimed only on
5 a timely filed original return of the qualified taxpayer and only
6 with respect to a qualified full-time employee for whom the
7 qualified taxpayer has received a tentative credit reservation.

8 (b) For purposes of this section:

9 (1) The “tentative credit amount” for a taxable year shall be
10 equal to the product of the applicable credit percentage for each
11 qualified full-time employee and the qualified wages paid by the
12 qualified taxpayer during the taxable year to that qualified full-time
13 employee.

14 (2) The “applicable percentage” for a taxable year shall be equal
15 to a fraction, the numerator of which is the net increase in the total
16 number of full-time employees employed in this state during the
17 taxable year, determined on an annual full-time equivalent basis,
18 as compared with the total number of full-time employees
19 employed in this state during the base year, determined on the
20 same basis, and the denominator of which shall be the total number
21 of qualified full-time employees employed in this state during the
22 taxable year. The applicable percentage shall not exceed 100
23 percent.

24 (3) The “applicable credit percentage” means the credit
25 percentage for the calendar year during which a qualified full-time
26 employee was first employed by the qualified taxpayer. The
27 applicable credit percentage for all calendar years shall be 35
28 percent.

29 (4) “Base year” means the 2013 taxable year, except in the case
30 of a qualified taxpayer who first hires a qualified full-time
31 employee in a taxable year beginning on or after January 1, 2015,
32 the base year means the taxable year immediately preceding the
33 taxable year in which a qualified full-time employee was first hired
34 by the qualified taxpayer.

35 (5) “Acquired” includes any gift, inheritance, transfer incident
36 to divorce, or any other transfer, whether or not for consideration.

37 (6) “Annual full-time equivalent” means either of the following:

38 (A) In the case of a full-time employee paid hourly qualified
39 wages, “annual full-time equivalent” means the total number of

1 hours worked for the qualified taxpayer by the employee, not to
2 exceed 2,000 hours per employee, divided by 2,000.

3 (B) In the case of a salaried full-time employee, “annual
4 full-time equivalent” means the total number of weeks worked for
5 the qualified taxpayer by the employee divided by 52.

6 (7) “Designated census tract” means a census tract within the
7 state that is determined by the Department of Finance to have a
8 civilian unemployment rate that is within the top 25 percent of all
9 census tracts within the state and has a poverty rate within the top
10 25 percent of all census tracts within the state, as prescribed in
11 Section 13073.5 of the Government Code.

12 (8) “Former enterprise zone” means an enterprise zone
13 designated as of December 31, 2011, and any expansion of an
14 enterprise zone prior to December 31, 2012, under former Chapter
15 12.8 (commencing with former Section 7070) of Division 7 of
16 Title 1 of the Government Code, as in effect on December 31,
17 2012, excluding any census tract within an enterprise zone that is
18 identified by the Department of Finance pursuant to Section
19 13073.5 of the Government Code as a census tract within the lowest
20 quartile of census tracts with the lowest civilian unemployment
21 and poverty.

22 (9) “Minimum wage” means the wage established pursuant to
23 Chapter 1 (commencing with Section 1171) of Part 4 of Division
24 2 of the Labor Code.

25 (10) (A) “Qualified full-time employee” means an individual
26 who meets all of the following requirements:

27 (i) Performs at least 50 percent of his or her services for the
28 qualified taxpayer during the taxable year in a designated census
29 tract or former enterprise zone.

30 (ii) Receives starting wages that are at least 150 percent of the
31 minimum wage.

32 (iii) Is hired by the qualified taxpayer on or after January 1,
33 2014.

34 (iv) Is hired by the qualified taxpayer after the date the
35 Department of Finance determines that the census tract referred
36 to in clause (i) is a designated census tract or that the census tracts
37 within a former enterprise zone are not census tracts with the lowest
38 civilian unemployment and poverty.

39 (v) Satisfies either of the following conditions:

1 (I) Is paid qualified wages by the qualified taxpayer for services
2 not less than an average of 35 hours per week.

3 (II) Is a salaried employee and was paid compensation during
4 the taxable year for full-time employment, within the meaning of
5 Section 515 of the Labor Code, by the qualified taxpayer.

6 (vi) Upon commencement of employment with the qualified
7 taxpayer, satisfies any of the following conditions:

8 (I) Was unemployed for the six months immediately preceding
9 employment with the qualified taxpayer. In the case of an
10 individual that completed a program of study at a college,
11 university, or other postsecondary educational institution, received
12 a baccalaureate, postgraduate, or professional degree, and was
13 unemployed for the six months immediately preceding employment
14 with the qualified taxpayer, that individual must have completed
15 that program of study at least 12 months prior to the individual's
16 commencement of employment with the qualified taxpayer.

17 (II) Is a veteran that had not been employed since separation
18 from service in the Armed Forces of the United States.

19 (III) Was a recipient of the credit allowed under Section 32 of
20 the Internal Revenue Code, relating to earned income, as applicable
21 for federal purposes, for the previous taxable year.

22 (IV) Was an ex-offender, within the meaning of Section
23 17053.74.

24 (V) *Is a recipient of CalWORKs or General Assistance.*

25 (B) An individual may be considered a qualified full-time
26 employee only for the period of time commencing with the date
27 the individual is first employed by the qualified taxpayer and
28 ending 60 months thereafter.

29 (11) (A) "Qualified taxpayer" means a person or entity engaged
30 in a trade or business within a designated census tract or former
31 enterprise zone that, during the taxable year, pays or incurs
32 qualified wages.

33 (B) In the case of any pass-thru entity, the determination of
34 whether a taxpayer is a qualified taxpayer under this section shall
35 be made at the entity level and any credit under this section or
36 Section 23626 shall be allowed to the pass-thru entity and passed
37 through to the partners and shareholders in accordance with
38 applicable provisions of this part or Part 11 (commencing with
39 Section 23001). For purposes of this subdivision, the term
40 "pass-thru entity" means any partnership or "S" corporation.

1 (C) “Qualified taxpayers” shall not include any of the following:

2 (i) Employers that provide temporary help services, as described
3 in Code 561320 of the North American Industry Classification
4 System (NAICS) published by the United States Office of
5 Management and Budget, 2012 Edition.

6 (ii) Employers that provide retail trade services, as described
7 in Sector 44-45 of the North American Industry Classification
8 System (NAICS) published by the United States Office of
9 Management and Budget, 2012 Edition.

10 (iii) Employers that are primarily engaged in providing food
11 services, as described in Code 711110, 722511, 722513, 722514,
12 or 722515 of the North American Industry Classification System
13 (NAICS) published by the United States Office of Management
14 and Budget, 2012 edition.

15 (iv) Employers that are primarily engaged in services as
16 described in Code 713210, 721120, or 722410 of the North
17 American Industry Classification System (NAICS) published by
18 the United States Office of Management and Budget, 2012 edition.

19 (v) (I) *An employer that is a sexually oriented business.*

20 (II) *For purposes of this clause:*

21 (aa) *“Sexually oriented business” means a nightclub, bar,*
22 *restaurant, or similar commercial enterprise that provides for an*
23 *audience of two or more individuals live nude entertainment or*
24 *live nude performances where the nudity is a function of everyday*
25 *business operations and where nudity is a planned and intentional*
26 *part of the entertainment or performance.*

27 (ab) *“Nude” means clothed in a manner that leaves uncovered*
28 *or visible, through less than fully opaque clothing, any portion of*
29 *the genitals or, in the case of a female, any portion of the breasts*
30 *below the top of the areola of the breasts.*

31 (D) Subparagraph (C) shall not apply to a taxpayer that is a
32 “small business.”

33 (12) “Qualified wages” means those wages that meet all of the
34 following requirements:

35 (A) That portion of wages paid or incurred by the qualified
36 taxpayer during the taxable year to each qualified full-time
37 employee that exceeds 150 percent of minimum wage, but does
38 not exceed 350 percent of minimum wage.

39 (B) Wages paid or incurred during the 60-month period
40 beginning with the first day the qualified full-time employee

commences employment with the qualified taxpayer. In the case of any employee who is reemployed, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer, this reemployment shall not be treated as constituting commencement of employment for purposes of this section.

(C) Except as provided in paragraph (3) of subdivision (n), qualified wages shall not include any wages paid or incurred by the qualified taxpayer on or after the date that the Department of Finance's redesignation of designated census tracts is effective, as provided in paragraph (2) of subdivision (g), so that a census tract is no longer a designated census tract.

(13) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(14) (A) "Small business" means a trade or business that has aggregate gross receipts, less returns and allowances reportable to this state, of less than two million dollars (\$2,000,000) during the previous taxable year.

(B) (i) For purposes of this paragraph, "gross receipts, less returns and allowances reportable to this state," means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(ii) In the case of any trade or business activity conducted by a partnership or an "S" corporation, the limitations set forth in subparagraph (A) shall be applied to the partnership or "S" corporation and to each partner or shareholder.

(C) (i) *"Small business" shall not include a sexually oriented business.*

(ii) *For purposes of this subparagraph:*

(I) *"Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance.*

(II) *"Nude" means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of*

1 *the genitals or, in the case of a female, any portion of the breasts*
2 *below the top of the areola of the breasts.*

3 (15) An individual is “unemployed” for any period for which
4 the individual is all of the following:

5 (A) Not in receipt of wages subject to withholding under Section
6 13020 of the Unemployment Insurance Code for that period.

7 (B) Not a self-employed individual (within the meaning of
8 Section 401(c)(1)(B) of the Internal Revenue Code, relating to
9 self-employed individual) for that period.

10 (C) Not a registered full-time student at a high school, college,
11 university, or other postsecondary educational institution for that
12 period.

13 (c) The net increase in full-time employees of a qualified
14 taxpayer shall be determined as provided by this subdivision:

15 (1) (A) The net increase in full-time employees shall be
16 determined on an annual full-time equivalent basis by subtracting
17 from the amount determined in subparagraph (C) the amount
18 determined in subparagraph (B).

19 (B) The total number of full-time employees employed in the
20 base year by the taxpayer and by any trade or business acquired
21 by the taxpayer during the current taxable year.

22 (C) The total number of full-time employees employed in the
23 current taxable year by the taxpayer and by any trade or business
24 acquired during the current taxable year.

25 (2) For taxpayers who first commence doing business in this
26 state during the taxable year, the number of full-time employees
27 for the base year shall be zero.

28 (d) For purposes of this section:

29 (1) All employees of the trades or businesses that are treated as
30 related under Section 267, 318, or 707 of the Internal Revenue
31 Code shall be treated as employed by a single taxpayer.

32 (2) In determining whether the taxpayer has first commenced
33 doing business in this state during the taxable year, the provisions
34 of subdivision (f) of Section 17276.20, without application of
35 paragraph (7) of that subdivision, shall apply.

36 (e) (1) To be eligible for the credit allowed by this section, a
37 qualified taxpayer shall, upon hiring a qualified full-time employee,
38 request a tentative credit reservation from the Franchise Tax Board
39 within 30 days of complying with the Employment Development
40 Department’s new hire reporting requirements as provided in

1 Section 1088.5 of the Unemployment Insurance Code, in the form
2 and manner prescribed by the Franchise Tax Board.

3 (2) To obtain a tentative credit reservation with respect to a
4 qualified full-time employee, the qualified taxpayer shall provide
5 necessary information, as determined by the Franchise Tax Board,
6 including the name, social security number, the start date of
7 employment, the rate of pay of the qualified full-time employee,
8 the qualified taxpayer's gross receipts, less returns and allowances,
9 for the previous taxable year, and whether the qualified full-time
10 employee is a resident of a targeted employment area, as defined
11 in former Section 7072 of the Government Code, as in effect on
12 December 31, 2013.

13 (3) The qualified taxpayer shall provide the Franchise Tax Board
14 an annual certification of employment with respect to each
15 qualified full-time employee hired in a previous taxable year, on
16 or before, the 15th day of the third month of the taxable year. The
17 certification shall include necessary information, as determined
18 by the Franchise Tax Board, including the name, social security
19 number, start date of employment, and rate of pay for each qualified
20 full-time employee employed by the qualified taxpayer.

21 (4) A tentative credit reservation provided to a taxpayer with
22 respect to an employee of that taxpayer shall not constitute a
23 determination by the Franchise Tax Board with respect to any of
24 the requirements of this section regarding a taxpayer's eligibility
25 for the credit authorized by this section.

26 (f) The Franchise Tax Board shall do all of the following:

27 (1) Approve a tentative credit reservation with respect to a
28 qualified full-time employee hired during a calendar year.

29 (2) Determine the aggregate tentative reservation amount and
30 the aggregate small business tentative reservation amount for a
31 calendar year.

32 (3) A tentative credit reservation request from a qualified
33 taxpayer with respect to a qualified full-time employee who is a
34 resident of a targeted employment area, as defined in former
35 Section 7072 of the Government Code, as in effect on December
36 31, 2013, shall be expeditiously processed by the Franchise Tax
37 Board. The residence of a qualified full-time employee in a targeted
38 employment area shall have no other effect on the eligibility of an
39 individual as a qualified full-time employee or the eligibility of a
40 qualified taxpayer for the credit authorized by this section.

(4) Notwithstanding Section 19542, provide as a searchable database on its Internet Web site, for each taxable year beginning on or after January 1, 2014, and before January 1, 2021, the employer names, amounts of tax credit claimed, and number of new jobs created for each taxable year pursuant to this section and Section 23626.

(g) (1) The Department of Finance shall, by January 1, 2014, and by January 1 of every fifth year thereafter, provide the Franchise Tax Board with a list of the designated census tracts and a list of census tracts with the lowest civilian unemployment rate.

(2) The redesignation of designated census tracts and lowest civilian unemployment census tracts by the Department of Finance as provided in Section 13073.5 of the Government Code shall be effective, for purposes of this credit, one year after the date the Department of Finance redesignates the designated census tracts.

(h) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) All employees of trades or businesses that are not incorporated, and that are under common control, shall be treated as employed by a single taxpayer.

(3) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated to that trade or business in that manner.

(4) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (h) of Section 23626, shall apply with respect to determining employment.

(5) If an employer acquires the major portion of a trade or business of another employer, hereinafter in this paragraph referred to as the predecessor, or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section, other than subdivision (i), for any taxable year ending after that acquisition, the employment relationship between a qualified full-time employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

1 (i) (1) If the employment of any qualified full-time employee,
2 with respect to whom qualified wages are taken into account under
3 subdivision (a), is terminated by the qualified taxpayer at any time
4 during the first 36 months after commencing employment with
5 the qualified taxpayer, whether or not consecutive, the tax imposed
6 by this part for the taxable year in which that employment is
7 terminated shall be increased by an amount equal to the credit
8 allowed under subdivision (a) for that taxable year and all prior
9 taxable years attributable to qualified wages paid or incurred with
10 respect to that employee.

11 (2) Paragraph (1) shall not apply to any of the following:

12 (A) A termination of employment of a qualified full-time
13 employee who voluntarily leaves the employment of the qualified
14 taxpayer.

15 (B) A termination of employment of a qualified full-time
16 employee who, before the close of the period referred to in
17 paragraph (1), becomes disabled and unable to perform the services
18 of that employment, unless that disability is removed before the
19 close of that period and the qualified taxpayer fails to offer
20 reemployment to that employee.

21 (C) A termination of employment of a qualified full-time
22 employee, if it is determined that the termination was due to the
23 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
24 of Title 22 of the California Code of Regulations, of that employee.

25 (D) A termination of employment of a qualified full-time
26 employee due to a substantial reduction in the trade or business
27 operations of the qualified taxpayer, including reductions due to
28 seasonal employment.

29 (E) A termination of employment of a qualified full-time
30 employee, if that employee is replaced by other qualified full-time
31 employees so as to create a net increase in both the number of
32 employees and the hours of employment.

33 (F) A termination of employment of a qualified full-time
34 employee, when that employment is considered seasonal
35 employment and the qualified employee is rehired on a seasonal
36 basis.

37 (3) For purposes of paragraph (1), the employment relationship
38 between the qualified taxpayer and a qualified full-time employee
39 shall not be treated as terminated by reason of a mere change in
40 the form of conducting the trade or business of the qualified

1 taxpayer, if the qualified full-time employee continues to be
2 employed in that trade or business and the qualified taxpayer retains
3 a substantial interest in that trade or business.

4 (4) Any increase in tax under paragraph (1) shall not be treated
5 as tax imposed by this part for purposes of determining the amount
6 of any credit allowable under this part.

7 (j) In the case of an estate or trust, both of the following apply:

8 (1) The qualified wages for any taxable year shall be apportioned
9 between the estate or trust and the beneficiaries on the basis of the
10 income of the estate or trust allocable to each.

11 (2) Any beneficiary to whom any qualified wages have been
12 apportioned under paragraph (1) shall be treated, for purposes of
13 this part, as the employer with respect to those wages.

14 (k) In the case where the credit allowed by this section exceeds
15 the “net tax,” the excess may be carried over to reduce the “net
16 tax” in the following year, and the succeeding four years if
17 necessary, until the credit is exhausted.

18 (l) The Franchise Tax Board may prescribe rules, guidelines,
19 or procedures necessary or appropriate to carry out the purposes
20 of this section, including any guidelines regarding the allocation
21 of the credit allowed under this section. Chapter 3.5 (commencing
22 with Section 11340) of Part 1 of Division 3 of Title 2 of the
23 Government Code shall not apply to any rule, guideline, or
24 procedure prescribed by the Franchise Tax Board pursuant to this
25 section.

26 (m) (1) Upon the effective date of this section, the Department
27 of Finance shall estimate the total dollar amount of credits that
28 will be claimed under this section with respect to each fiscal year
29 from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

30 (2) The Franchise Tax Board shall annually provide to the Joint
31 Legislative Budget Committee, by no later than March 1, a report
32 of the total dollar amount of the credits claimed under this section
33 with respect to the relevant fiscal year. The report shall compare
34 the total dollar amount of credits claimed under this section with
35 respect to that fiscal year with the department’s estimate with
36 respect to that same fiscal year. If the total dollar amount of credits
37 claimed for the fiscal year is less than the estimate for that fiscal
38 year, the report shall identify options for increasing annual claims
39 of the credit so as to meet estimated amounts.

(n) (1) This section shall remain in effect only until December 1, 2024, and as of that date is repealed.

(2) Notwithstanding paragraph (1) of subdivision (a), this section shall continue to be operative for taxable years beginning on or after January 1, 2021, but only with respect to qualified full-time employees who commenced employment with a qualified taxpayer in a designated census tract or former enterprise zone in a taxable year beginning before January 1, 2021.

(3) This section shall remain operative for any qualified taxpayer with respect to any qualified full-time employee after the designated census tract is no longer designated or a former enterprise zone ceases to be a former enterprise zone, as defined in this section, for the remaining period, if any, of the 60-month period after the original date of hiring of an otherwise qualified full-time employee and any wages paid or incurred with respect to those qualified full-time employees after the designated census tract is no longer designated or a former enterprise zone ceases to be a former enterprise zone, as defined in this section, shall be treated as qualified wages under this section, provided the employee satisfies any other requirements of paragraphs (10) and (12) of subdivision (b), as if the designated census tract was still designated and binding.

SEC. 2. Section 23626 of the Revenue and Taxation Code, as added by Section 33 of Assembly Bill 93 of the 2013-14 Regular Session, is amended to read:

23626. (a) (1) For each taxable year beginning on or after January 1, 2014, and before January 1, 2021, there shall be allowed to a qualified taxpayer that hires a qualified full-time employee and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or former enterprise zone, and that receives a tentative credit reservation for that qualified full-time employee, a credit against the “tax,” as defined by Section 23036, in an amount calculated under this section.

(2) The amount of the credit allowable under this section for a taxable year shall be equal to the product of the tentative credit amount for the taxable year and the applicable percentage for the taxable year.

(3) (A) If a qualified taxpayer relocates to a designated census tract or former enterprise zone, the qualified taxpayer shall be

1 allowed a credit with respect to qualified wages for each qualified
2 full-time employee who is employed within the new location only
3 if the qualified taxpayer provides each employee at the previous
4 location or locations a written offer of employment at the new
5 location in the designated census tract or former enterprise zone
6 with comparable compensation.

7 (B) For purposes of this paragraph, “relocates to a designated
8 census tract or former enterprise zone” means an increase in the
9 number of qualified full-time employees, employed by a qualified
10 taxpayer, within a designated census tract or tracts or former
11 enterprise zones within a 12-month period in which there is a
12 decrease in the number of full-time employees, employed by the
13 qualified taxpayer in this state, but outside of designated census
14 tracts or former enterprise zone.

15 (C) This paragraph shall not apply to a small business.

16 (4) The credit allowed by this section may only be claimed on
17 a timely filed original return of the qualified taxpayer and only
18 with respect to a qualified full-time employee for whom the
19 qualified taxpayer has received a tentative credit reservation.

20 (b) For purposes of this section:

21 (1) The “tentative credit amount” for a taxable year shall be
22 equal to the product of the applicable credit percentage for each
23 qualified full-time employee and the qualified wages paid by the
24 qualified taxpayer during the taxable year to that qualified full-time
25 employee.

26 (2) The “applicable percentage” for a taxable year shall be equal
27 to a fraction, the numerator of which is the net increase in the total
28 number of full-time employees employed in this state during the
29 taxable year, determined on an annual full-time equivalent basis,
30 as compared with the total number of full-time employees
31 employed in this state during the base year, determined on the
32 same basis, and the denominator of which shall be the total number
33 of qualified full-time employees employed in this state during the
34 taxable year. The applicable percentage shall not exceed 100
35 percent.

36 (3) The “applicable credit percentage” means the credit
37 percentage for the calendar year during which a qualified full-time
38 employee was first employed by the qualified taxpayer. The
39 applicable credit percentage for all calendar years shall be 35
40 percent.

1 (4) “Base year” means the 2013 taxable year, or in the case of
2 a qualified taxpayer who first hires a qualified full-time employee
3 in a taxable year beginning on or after January 2015, the taxable
4 year immediately preceding the taxable year in which the qualified
5 full-time employee was hired.

6 (5) “Acquired” includes any gift, inheritance, transfer incident
7 to divorce, or any other transfer, whether or not for consideration.

8 (6) “Annual full-time equivalent” means either of the following:

9 (A) In the case of a full-time employee paid hourly qualified
10 wages, “annual full-time equivalent” means the total number of
11 hours worked for the qualified taxpayer by the employee (not to
12 exceed 2,000 hours per employee) divided by 2,000.

13 (B) In the case of a salaried full-time employee, “annual
14 full-time equivalent” means the total number of weeks worked for
15 the qualified taxpayer by the employee divided by 52.

16 (7) “Designated census tract” means a census tract within the
17 state that is determined by the Department of Finance to have a
18 civilian unemployment rate that is within the top 25 percent of all
19 census tracts within the state and has a poverty rate within the top
20 25 percent of all census tracts within the state, as prescribed in
21 Section 13073.5 of the Government Code.

22 (8) “Former enterprise zone” means an enterprise zone
23 designated as of December 31, 2011, and any expansion of an
24 enterprise zone prior to December 31, 2012, under former Chapter
25 12.8 (commencing with former Section 7070) of Division 7 of
26 Title 1 of the Government Code, as in effect on December 31,
27 2012, excluding any census tract within an enterprise zone that is
28 identified by the Department of Finance pursuant to Section
29 13073.5 of the Government Code as a census tract within the lowest
30 quartile of census tracts with the lowest civilian unemployment
31 and poverty.

32 (9) “Minimum wage” means the wage established pursuant to
33 Chapter 1 (commencing with Section 1171) of Part 4 of Division
34 2 of the Labor Code.

35 (10) (A) “Qualified full-time employee” means an individual
36 who meets all of the following requirements:

37 (i) Performs at least 50 percent of his or her services for the
38 qualified taxpayer during the taxable year in a designated census
39 tract or former enterprise zone.

- 1 (ii) Receives starting wages that are at least 150 percent of the
2 minimum wage.
- 3 (iii) Is hired by the qualified taxpayer on or after January 1,
4 2014.
- 5 (iv) Is hired by the qualified taxpayer after the date the
6 Department of Finance determines that the census tract referred
7 to in clause (i) is a designated census tract or that the census tracts
8 within a former enterprise zone are not census tracts with the lowest
9 civilian unemployment and poverty.
- 10 (v) Satisfies either of the following conditions:
- 11 (I) Is paid qualified wages by the qualified taxpayer for services
12 not less than an average of 35 hours per week.
- 13 (II) Is a salaried employee and was paid compensation during
14 the taxable year for full-time employment, within the meaning of
15 Section 515 of the Labor Code, by the qualified taxpayer.
- 16 ~~(vii)~~
- 17 (vi) Upon commencement of employment with the qualified
18 taxpayer, satisfies any of the following conditions:
- 19 (I) Was unemployed for the six months immediately preceding
20 employment with the qualified taxpayer. In the case of an
21 individual who completed a program of study at a college,
22 university, or other postsecondary educational institution, received
23 a baccalaureate, postgraduate, or professional degree, and was
24 unemployed for the six months immediately preceding employment
25 with the qualified taxpayer, that individual must have completed
26 that program of study at least 12 months prior to the individual's
27 commencement of employment with the qualified taxpayer.
- 28 (II) Is a veteran that had not been employed since separation
29 from service in the Armed Forces of the United States.
- 30 (III) Was a recipient of the credit allowed under Section 32 of
31 the Internal Revenue Code, relating to earned income, as applicable
32 for federal purposes, for the previous taxable year.
- 33 (IV) Was an ex-offender, within the meaning of Section 23622.7.
- 34 (V) *Is a recipient of CalWORKs or General Assistance.*
- 35 (B) An individual may only be considered a qualified full-time
36 employee for the period of time commencing with the date the
37 individual is first employed by the qualified taxpayer and ending
38 60 months thereafter.
- 39 (11) (A) "Qualified taxpayer" means a corporation engaged in
40 a trade or business within designated census tract or former

enterprise zone that, during the taxable year, pays or incurs qualified wages.

(B) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.73 shall be allowed to the pass-thru entity and passed through to the partners and shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subdivision, the term “pass-thru entity” means any partnership or “S” corporation.

(C) “Qualified taxpayer” shall not include any of the following:

(i) Employers that provide temporary help services, as described in Code 561320 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2012 edition.

(ii) Employers that provide retail trade services, as described in Sector 44-45 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2012 edition.

(iii) Employers that are primarily engaged in providing food services, as described in Code 711110, 722511, 722513, 722514, or 722515 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2012 edition.

(iv) Employers that are primarily engaged in services as described in Code 713210, 721120, or 722410 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2012 edition.

(v) (I) *An employer that is a sexually oriented business.*

(II) *For purposes of this clause:*

(aa) *“Sexually oriented business” means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance.*

(ab) *“Nude” means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.*

1 (D) Subparagraph (C) shall not apply to a taxpayer that is a
2 “small business.”

3 (12) “Qualified wages” means those wages that meet all of the
4 following requirements:

5 (A) That portion of wages paid or incurred by the qualified
6 taxpayer during the taxable year to each qualified full-time
7 employee that exceeds 150 percent of minimum wage, but does
8 not exceed 350 percent of the minimum wage.

9 (B) Wages paid or incurred during the 60-month period
10 beginning with the first day the qualified full-time employee
11 commences employment with the qualified taxpayer. In the case
12 of any employee who is reemployed, including regularly occurring
13 seasonal increase, in the trade or business operations of the
14 qualified taxpayer, this reemployment shall not be treated as
15 constituting commencement of employment for purposes of this
16 section.

17 (C) Except as provided in paragraph (3) of subdivision (m),
18 qualified wages shall not include any wages paid or incurred by
19 the qualified taxpayer on or after the date that the Department of
20 Finance’s redesignation of designated census tracts is effective,
21 as provided in paragraph (2) of subdivision (g), so that a census
22 tract is no longer determined to be a designated census tract.

23 (13) “Seasonal employment” means employment by a qualified
24 taxpayer that has regular and predictable substantial reductions in
25 trade or business operations.

26 (14) (A) “Small business” means a trade or business that has
27 aggregate gross receipts, less returns and allowances reportable to
28 this state, of less than two million dollars (\$2,000,000) during the
29 previous taxable year.

30 (B) (i) For purposes of this paragraph, “gross receipts, less
31 returns and allowances reportable to this state,” means the sum of
32 the gross receipts from the production of business income, as
33 defined in subdivision (a) of Section 25120, and the gross receipts
34 from the production of nonbusiness income, as defined in
35 subdivision (d) of Section 25120.

36 (ii) In the case of any trade or business activity conducted by a
37 partnership or an “S” corporation, the limitations set forth in
38 subparagraph (A) shall be applied to the partnership or “S”
39 corporation and to each partner or shareholder.

(iii) For taxpayers that are required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the dollar amount specified in subparagraph (A) shall apply to the aggregate gross receipts of all taxpayers that are required to be or authorized to be included in a combined report.

(C) (i) *“Small business” shall not include a sexually oriented business.*

(ii) *For purposes of this subparagraph:*

(I) *“Sexually oriented business” means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance.*

(II) *“Nude” means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.*

(15) An individual is “unemployed” for any period for which the individual is all of the following:

(A) Not in receipt of wages subject to withholding under Section 13020 of the Unemployment Insurance Code for that period.

(B) Not a self-employed individual (within the meaning of Section 401(c)(1)(B) of the Internal Revenue Code, relating to self-employed individual) for that period.

(C) Not a registered full-time student at a high school, college, university, or other postsecondary educational institution for that period.

(c) The net increase in full-time employees of a qualified taxpayer shall be determined as provided by this subdivision:

(1) (A) The net increase in full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of full-time employees employed in the base year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

1 (C) The total number of full-time employees employed in the
2 current taxable year by the taxpayer and by any trade or business
3 acquired during the current taxable year.

4 (2) For taxpayers who first commence doing business in this
5 state during the taxable year, the number of full-time employees
6 for the base year shall be zero.

7 (d) For purposes of this section:

8 (1) All employees of the trades or businesses that are treated as
9 related under Section 267, 318, or 707 of the Internal Revenue
10 Code shall be treated as employed by a single taxpayer.

11 (2) In determining whether the taxpayer has first commenced
12 doing business in this state during the taxable year, the provisions
13 of subdivision (g) of Section 24416.20, without application of
14 paragraph (7) of that subdivision, shall apply.

15 (e) (1) To be eligible for the credit allowed by this section, a
16 qualified taxpayer shall, upon hiring a qualified full-time employee,
17 request a tentative credit reservation from the Franchise Tax Board
18 within 30 days of complying with the Employment Development
19 Department's new hire reporting requirement as provided in
20 Section 1088.5 of the Unemployment Insurance Code, in the form
21 and manner prescribed by the Franchise Tax Board.

22 (2) To obtain a tentative credit reservation with respect to a
23 qualified full-time employee, the qualified taxpayer shall provide
24 necessary information, as determined by the Franchise Tax Board,
25 including the name, the social security number, the start date of
26 employment, the rate of pay of the qualified full-time employee,
27 the qualified taxpayer's gross receipts, less returns and allowances,
28 for the previous taxable year, and whether the qualified full-time
29 employee is a resident of a targeted employment area, as defined
30 in former Section 7072 of the Government Code, as in effect on
31 December 31, 2013.

32 (3) The qualified taxpayer shall provide the Franchise Tax Board
33 an annual certification of employment with respect to each
34 qualified full-time employee hire in a previous taxable year, on or
35 before the 15th day of the third month of the taxable year. The
36 certification shall include necessary information, as determined
37 by the Franchise Tax Board, including the name, social security
38 number, start date of employment, and rate of pay for each qualified
39 full-time employee employed by the qualified taxpayer.

1 (4) A tentative credit reservation provided to a taxpayer with
2 respect to an employee of that taxpayer shall not constitute a
3 determination by the Franchise Tax Board with respect to any of
4 the requirements of this section regarding a taxpayer's eligibility
5 for the credit authorized by this section.

6 (f) The Franchise Tax Board shall do all of the following:

7 (1) Approve a tentative credit reservation with respect to a
8 qualified full-time employee hired during a calendar year.

9 (2) Determine the aggregate tentative reservation amount and
10 the aggregate small business tentative reservation amount for a
11 calendar year.

12 (3) A tentative credit reservation request from a qualified
13 taxpayer with respect to a qualified full-time employee who is a
14 resident of a targeted employment area, as defined in former
15 Section 7072 of the Government Code, as in effect on December
16 31, 2013, shall be expeditiously processed by the Franchise Tax
17 Board. The residence of a qualified full-time employee in a targeted
18 employment area shall have no other effect on the eligibility of an
19 individual as a qualified full-time employee or the eligibility of a
20 qualified taxpayer for the credit authorized by this section.

21 (4) Notwithstanding Section 19542, provide as a searchable
22 database on its Internet Web site, for each taxable year beginning
23 on or after January 1, 2014, and before January 1, 2021, the
24 employer names, amounts of tax credit claimed, and number of
25 new jobs created for each taxable year pursuant to this section and
26 Section 17053.73.

27 (g) (1) The Department of Finance shall, by January 1, 2014,
28 and by January 1 of every fifth year thereafter, provide the
29 Franchise Tax Board with a list of the designated census tracts and
30 a list of census tracts with the lowest civilian unemployment rate.

31 (2) The redesignation of designated census tracts and lowest
32 civilian unemployment census tracts by the Department of Finance
33 as provided in Section 13073.5 of the Government Code shall be
34 effective, for purposes of this credit, one year after the date that
35 the Department of Finance redesignates the designated census
36 tracts.

37 (h) (1) For purposes of this section:

38 (A) All employees of the trades or businesses that are treated
39 as related under Section 267, 318, or 707 of the Internal Revenue
40 Code shall be treated as employed by a single qualified taxpayer.

1 (B) All employees of all corporations that are members of the
2 same controlled group of corporations shall be treated as employed
3 by a single qualified taxpayer.

4 (C) The credit, if any, allowable by this section to each member
5 shall be determined by reference to its proportionate share of the
6 expense of the qualified wages giving rise to the credit, and shall
7 be allocated in that manner.

8 (D) If a qualified taxpayer acquires the major portion of a trade
9 or business of another taxpayer, hereinafter in this paragraph
10 referred to as the predecessor, or the major portion of a separate
11 unit of a trade or business of a predecessor, then, for purposes of
12 applying this section for any taxable year ending after that
13 acquisition, the employment relationship between a qualified
14 full-time employee and a qualified taxpayer shall not be treated
15 as terminated if the employee continues to be employed in that
16 trade or business.

17 (2) For purposes of this subdivision, “controlled group of
18 corporations” means a controlled group of corporations as defined
19 in Section 1563(a) of the Internal Revenue Code, except that:

20 (A) “More than 50 percent” shall be substituted for “at least 80
21 percent” each place it appears in Section 1563(a)(1) of the Internal
22 Revenue Code.

23 (B) The determination shall be made without regard to
24 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
25 Revenue Code.

26 (3) Rules similar to the rules provided in Sections 46(e) and
27 46(h) of the Internal Revenue Code, as in effect on November 4,
28 1990, shall apply to both of the following:

29 (A) An organization to which Section 593 of the Internal
30 Revenue Code applies.

31 (B) A regulated investment company or a real estate investment
32 trust subject to taxation under this part.

33 (i) (1) If the employment of any qualified full-time employee,
34 with respect to whom qualified wages are taken into account under
35 subdivision (a), is terminated by the qualified taxpayer at any time
36 during the first 36 months after commencing employment with
37 the qualified taxpayer, whether or not consecutive, the tax imposed
38 by this part for the taxable year in which that employment is
39 terminated shall be increased by an amount equal to the credit
40 allowed under subdivision (a) for that taxable year and all prior

1 taxable years attributable to qualified wages paid or incurred with
2 respect to that employee.

3 (2) Paragraph (1) shall not apply to any of the following:

4 (A) A termination of employment of a qualified full-time
5 employee who voluntarily leaves the employment of the qualified
6 taxpayer.

7 (B) A termination of employment of a qualified full-time
8 employee who, before the close of the period referred to in
9 paragraph (1), becomes disabled and unable to perform the services
10 of that employment, unless that disability is removed before the
11 close of that period and the qualified taxpayer fails to offer
12 reemployment to that employee.

13 (C) A termination of employment of a qualified full-time
14 employee, if it is determined that the termination was due to the
15 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
16 of Title 22 of the California Code of Regulations, of that employee.

17 (D) A termination of employment of a qualified full-time
18 employee due to a substantial reduction in the trade or business
19 operations of the qualified taxpayer, including reductions due to
20 seasonal employment.

21 (E) A termination of employment of a qualified full-time
22 employee, if that employee is replaced by other qualified full-time
23 employees so as to create a net increase in both the number of
24 employees and the hours of employment.

25 (F) A termination of employment of a qualified full-time
26 employee, when that employment is considered seasonal
27 employment and the qualified employee is rehired on a seasonal
28 basis.

29 (3) For purposes of paragraph (1), the employment relationship
30 between the qualified taxpayer and a qualified full-time employee
31 shall not be treated as terminated by reason of a mere change in
32 the form of conducting the trade or business of the qualified
33 taxpayer, if the qualified full-time employee continues to be
34 employed in that trade or business and the qualified taxpayer retains
35 a substantial interest in that trade or business.

36 (4) Any increase in tax under paragraph (1) shall not be treated
37 as tax imposed by this part for purposes of determining the amount
38 of any credit allowable under this part.

39 (j) In the case where the credit allowed by this section exceeds
40 the “tax,” the excess may be carried over to reduce the “tax” in

1 the following year, and the succeeding four years if necessary,
2 until exhausted.

3 (k) The Franchise Tax Board may prescribe rules, guidelines,
4 or procedures necessary or appropriate to carry out the purposes
5 of this section, including any guidelines regarding the allocation
6 of the credit allowed under this section. Chapter 3.5 (commencing
7 with Section 11340) of Part 1 of Division 3 of Title 2 of the
8 Government Code shall not apply to any rule, guideline, or
9 procedure prescribed by the Franchise Tax Board pursuant to this
10 section.

11 (l) (1) Upon the effective date of this section, the Department
12 of Finance shall estimate the total dollar amount of credits that
13 will be claimed under this section with respect to each fiscal year
14 from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

15 (2) The Franchise Tax Board shall annually provide to the Joint
16 Legislative Budget Committee, by no later than March 1, a report
17 of the total dollar amount of the credits claimed under this section
18 with respect to the relevant fiscal year. The report shall compare
19 the total dollar amount of credits claimed under this section with
20 respect to that fiscal year with the department’s estimate with
21 respect to that same fiscal year. If the total dollar amount of credits
22 claimed for the fiscal year is less than the estimate for that fiscal
23 year, the report shall identify options for increasing annual claims
24 of the credit so as to meet estimated amounts.

25 (m) (1) This section shall remain in effect only until December
26 1, 2024, and as of that date is repealed.

27 (2) Notwithstanding paragraph (1) of subdivision (a), this section
28 shall continue to be operative for taxable years beginning on or
29 after January 1, 2021, but only with respect to qualified full-time
30 employees who commenced employment with a qualified taxpayer
31 in a designated census tract or former enterprise zone in a taxable
32 year beginning before January 1, 2021.

33 (3) This section shall remain operative for any qualified taxpayer
34 with respect to any qualified full-time employee after the
35 designated census tract is no longer designated or a former
36 enterprise zone ceases to be a former enterprise zone, as defined
37 in this section, for the remaining period, if any, of the 60-month
38 period after the original date of hiring of an otherwise qualified
39 full-time employee and any wages paid or incurred with respect
40 to those qualified full-time employees after the designated census

1 tract is no longer designated or a former enterprise zone ceases to
2 be a former enterprise zone, as defined in this section, shall be
3 treated as qualified wages under this section, provided the
4 employee satisfies any other requirements of paragraphs (10) and
5 (12) of subdivision (b), as if the designated census tract was still
6 designated and binding.

7 *SEC. 3. Section 1 of this bill that amends Section 17053.73 of*
8 *the Revenue and Taxation Code, as added by Assembly Bill 93 of*
9 *the 2013–14 Regular Session, and Section 2 of this bill that amends*
10 *Section 23626 of the Revenue and Taxation Code, as added by*
11 *Assembly Bill 93 of the 2013–14 Regular Session, shall become*
12 *operative only if Assembly Bill 93 of the 2013–14 Regular Session*
13 *is chaptered and becomes operative. The effect and operation of*
14 *Sections 1 and 2 of this bill are subject to Section 47 of Assembly*
15 *Bill 93 of the 2013–14 Regular Session.*

16 *SEC. 4. This act is an urgency statute necessary for the*
17 *immediate preservation of the public peace, health, or safety within*
18 *the meaning of Article IV of the Constitution and shall go into*
19 *immediate effect. The facts constituting the necessity are:*

20 *In order to ensure the public good by providing certainty*
21 *regarding the incentives available for attracting and retaining*
22 *jobs in economically distressed areas of the state, it is necessary*
23 *that this act take effect immediately.*

24 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
25 ~~changes relating to the Budget Act of 2013.~~